

CHINA'S ONE BELT ONE ROAD INITIATIVE AND THE EU'S FDI SCREENING REGIME: SCOPE, EU'S ATTITUDE AND IMPACT

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Abstract

Purpose – the purpose of this paper is to provide a general review of One Belt One Road initiative, the changing attitude of Europe towards China's FDI and potential effects of recently adopted Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.

Design/methodology/approach – this analysis is based on material gathered from academic papers and other publications, media reports, as well as data from official sources and independent research centres. Systematic analysis, generalisation, secondary data analysis, as well as linguistic methods were used in this research paper.

Finding – as Peoples' Republic of China (China) became one of the most important trade and investment partners of the EU, its rapid growth in economic and political influence and use of development policies, such as OBOR initiative, made the EU to label China as 'economic competitor' and 'strategic rival'. As around half of the EU members do not have investment screening mechanisms, the EU decided to adopt regulation for this matter – the Framework Regulation. It will become applicable from 11 October 2020 and will allow the EU and its Member States to raise concerns about effect of China's FDI on national security and public policy grounds and provides framework for screening of FDIs. Moreover, as the Framework Regulation establishes the list of projects of Union interest, which includes Trans-European Networks for Transport, whereas OBOR initiative is aiming at connecting China and Europe through land and sea route infrastructure, the European Commission will have an instrument to express its opinion regarding Chinese FDI, which are connected to OBOR initiative and related to transport infrastructure. Although such opinion will not binding, the member state will not be able to simply ignore but will have to provide explanation to the Commission if its opinion was not followed.

Research limitations/implications – there are several research limitations: firstly, there is a lack of comprehensive information on implementation of OBOR initiative, as even the official webpage of Belt and Road does not provide such information; secondly the Framework Regulation will become applicable from 11 October 2020. As the latest data indicates a substantial decrease of China's investment in EU (in 2017 and 2018), the flows of China's capital under OBOR initiative in general and FDI in particular might further decline before the Framework Regulation comes into force in 2020. Furthermore, without the actual practice of the Commission or EU Member States in the use of Framework Regulation regarding the China's FDI, this analysis serves as an early and theoretical assessment of potential impact of such investment screening on projects under China's OBOR initiative. Finally, this general review paper does not seek to analyse problematic aspects of the Framework Regulation or procedural issues on implementation of screening mechanisms.

Practical implications – as the OBOR initiative is broad in scope and vague in terms, this analysis allows to better understand its contents, China's rising importance in field of EU FDIs and provides introduction into the Framework Regulation, indicating its potential use by the EU or member states in regards to China's FDI related to OBOR initiative.

Originality/Value – this analysis provides explanation on changing EU-China economic policy and serves as a sound starting point for further research on China's investments in Europe, OBOR initiative or the impact of Framework Regulation to China's FDI.

Keywords: China, EU, OBOR, BRI, FDI, investment screening, Regulation 2019/452.

Research type: general review.

Introduction

The story of China's economic development from Great Chinese Famine in 1959-61 to second biggest economy of the world is miraculous. But China is not the first economic miracle of Asia, as modern Japan, Singapore, Hong Kong, South Korea or Taiwan are early examples of developmental state. This economic rise of China was based continuous and successful economic policies: from Opening of China started by Deng Xiaoping in December 1978, to China's accession to WTO in 2001 and 'Going Out' strategy of 2000, which seek promote national champions and to create sophisticated, high value-added, brand-name Chinese companies with their own intellectual property, as well as internally restructure low-end industry (Bambalas, 2017). China's newest policy concerning the further development of its economy is One Belt One Road (OBOR, in Chinese *Yi Dai Yi Lu*) initiative (BRI), which was announced in 2013 and aims to connect China and Europe via land route (Belt) and sea route (Road).

China is the EU's second-biggest trading partner, whereas the EU is China's biggest trading partner (Eurostat data, 2019). And although China and the EU have deep economic interdependence, the changing attitude of the EU towards inflows of capital from China and about China's role in the global system, led not only to a dramatic political shift in attitudes towards China, but also to a regulatory change: the introduction of new investment screening regime, which raises questions about its effects on execution of OBOR initiative in the EU.

This article seeks to provide a general review of BRI, changing attitude of Europe towards China and China's investments and review the recent legislation of the EU: the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (Framework Regulation)¹.

The OBOR initiative, its main features and link to the EU

In September 2013 during a speech in Kazakhstan, Xi Jinping, president of China and general secretary of the Communist Party of China officially announced about the Silk Road Economic Belt, which connects China and Europe overland (Verlare, 2016). During a speech at the Indonesian Parliament in October 2013, Xi Jinping also announced about the 21st Century Maritime Silk Road, which links Asia, Africa and Europe through sea route (China daily, 2013). As major policy changes or foreign policy initiatives are usually announced by the senior officials of China's communist party and the reference to Silk Road Economic Belt and 21st Century Maritime Silk Road where announced by the highest official of Chinese government (general secretary of the Communist Party of China), there was a keen interest on details about such policy initiative.

On 28 March 2015 National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, with State Council

¹ Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union. OJ L 791 , 21.3.2019

authorization adopted a policy document called Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road (the OBOR Vision)¹. That was the first policy document to provide more details on policy initiative announced by Xi Jinping in 2013 and it consisted of 8 chapters, which elaborated on the purpose, scope, principles, areas of interest and financing of such initiative.

Involvement of National Development and Reform Commission and State Council are strong indications of importance of such initiative. The National Development and Reform Commission is one of the departments of State Council that is in charge with macroeconomic issues, such as formulation and implementation of national economic development strategies, and deals with approvals of foreign funded key projects, key investment projects for overseas resources development, and investment projects utilizing large amount of foreign exchange (NDRC webpage, 2019). Authorization of State Council gives political weight of such initiative, as State Council is the highest executive institution (i.e. government) in China², which under Article 89 Paragraph 3 of the Constitution of People's Republic of China exercises unified leadership over the work of the ministries and commissions and directs all other administrative work of a national character that does not fall within the jurisdiction of the ministries and commissions. Moreover, the fact that the same main points were reiterated in 13th Five-Year Plan for Economic and Social Development of The People's Republic of China³, which included BRI as part of China's 'All-around opening up' strategy, indicates the importance and relevance of One Belt One Road initiative.

It is interesting that in one of the first chapters of the OBOR Vision (chapter II), China indicates the principles of BRI, in particular five principles of peaceful coexistence: mutual respect for each other's sovereignty and territorial integrity, mutual non-aggression, mutual non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence. These five principles of peaceful coexistence constitute a major pillar of China's foreign policy and were originally enshrined in Panchsheel Treaty⁴. The principle of non-interference in each other's internal affairs is the foundation of China's foreign policy and is still persistently invoked by China, whenever issues related possible human rights or international law violations such as: arbitrary detention of an estimated one million Turkic Muslims in China's Xinjiang region (Human Rights Watch, 2019), status of Taiwan, treatment of Tibetans (Ren, 2013), development of artificial islands in South China Sea, etc., are invoked. The text of the OBOR Vision, which prescribes that 'it [OBOR initiative] upholds the Five Principles of Peaceful Coexistence', indicates the expectations from China for other participants in OBOR initiatives.

The preface of the OBOR Vision specifies that the purpose of such initiative is to connect more closely not only European but also African countries. The chapter 'Framework' reiterates that OBOR is comprised of The Silk Road Economic Belt which will bring together China, Central Asia and Europe (the Baltic) on the one hand, and 21st-Century Maritime Silk Road, on the other. The Silk Road Economic Belt has become known as the 'Belt', whereas

¹ Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road. [interactive] 2015-03-28 [accessed 2019-04-20]. <http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html>.

² Article 85 of the Constitution of the People's Republic of China [interactive]. [accessed 2019-04-30]. <http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372967.htm>

³ Chapter 51 of 13th Five-Year Plan for Economic and Social Development of The People's Republic of China (2016-2020). [interactive] [accessed 2019-04-29]. <<http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf>>.

⁴ Agreement on trade and intercourse between Tibet Region of China and India (Panchsheel Treaty) (China-India) (signed at Peking with exchange of notes on 29 April 1954). 299 UNTS 57.

21st-Century Maritime Silk Road – as the ‘Road’. Under the OBOR Vision, the scope of Road includes New Eurasia Land Bridge and five economic corridors: China-Mongolia-Russia; China-Central Asia-West Asia; China-Indochina; China-Pakistan Economic Corridor and the Bangladesh-China-India-Myanmar Economic Corridor. Meanwhile the Road should connect China's coast to Europe through the South China Sea and the Indian Ocean in one route, and from China's coast through the South China Sea to the South Pacific in the other.

The OBOR Vision indicates 5 cooperation priorities: policy coordination, facilities connectivity, unimpeded trade, financial integration and people-to-people ties. Under the Vision the facilities connectivity is a priority area which includes construction of transport infrastructure, including railways and highways; construction of port infrastructure and advanced port cooperation; cooperation in the connectivity of energy infrastructure (oil, gas pipelines, power-transmission routes) and construction of cross-border optical cables and other communications trunk line networks creating an Information Silk Road.

On 20 June 2017 a new policy document called ‘Vision for Maritime Cooperation under the Belt and Road Initiative’ was announced¹, which indicated that Road should consist of building three ‘blue economic passages’: China-Indian Ocean-Africa- Mediterranean Sea Blue Economic Passage; China-Oceania-South Pacific, travelling southward from the South China Sea into the Pacific Ocean; and new blue economic passage leading up to Europe via the Arctic Ocean.

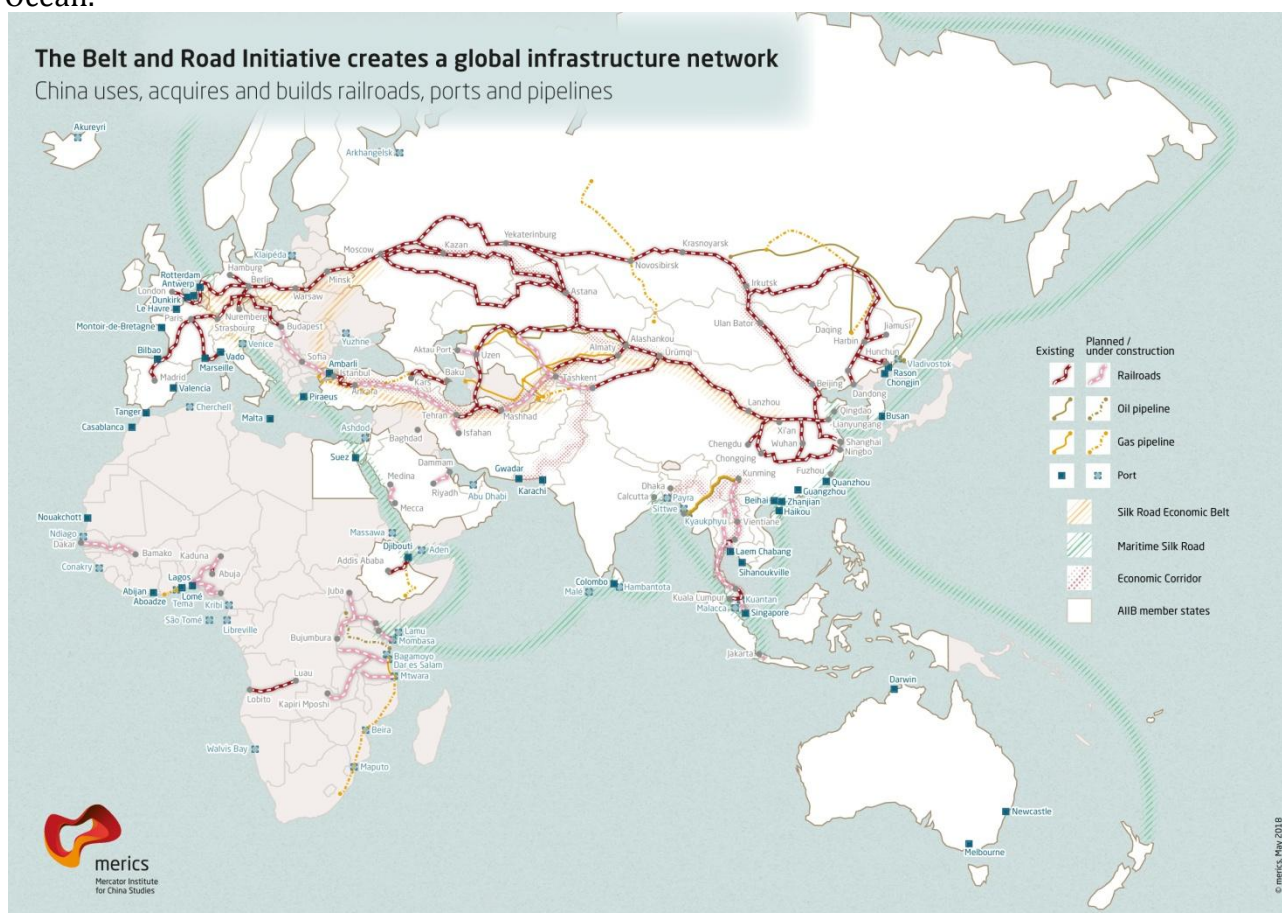


Figure 1. One Belt One Road (source: merics, 2018)²

¹ Vision for Maritime Cooperation under the Belt and Road Initiative. [interactive] 2015-03-28 [accessed 2019-04-20]. < <https://www.yidaiyilu.gov.cn/wcm.files/upload/CMSydyllgw/201706/201706200153032.pdf>>.

² The Belt and Road initiative map. [interactive] Mercator Institute for China Studies, May 2018 [accessed on 2019-03-29]. <https://www.merics.org/sites/default/files/2018-06/MERICS_Silk_Road_v8.jpg>.

The OBOR Vision also contains provisions concerning establishment of Asian Infrastructure Investment Bank and Silk Road Fund, which would act as financing tools for the OBOR initiative. On 25 December 2015, the China's proposed Asian Infrastructure Investment Bank (AIIB) was officially launched, with a legal capital of USD 100 billion¹ and focusing on regional connectivity and industrial development. AIIB provides funding in forms of loans (including loans to states) and equity investment, such as acquisition of shares or loan, that is convertible into shares (AIIB Financing operations, 2019). As under the Article 11 of Articles of Agreement of AIIB² this bank can provide or facilitate financing only to members or entities and enterprises operating in a member country, considerable amount of countries joined AIIB, including some EU members. At the end of April 2019 AIIB had 43 regional member countries (excluding Hong Kong) and 26 non-regional member countries, such as Germany, France, Italy, United Kingdom, Canada (AIIB members, 2019). The Silk Road Fund was established on December 2014 and has a capital of USD 40 billion and RMB 100 billion (Overview: Silk Road Fund, 2019). As of beginning of April 2019 Silk Road Fund had signed contracts to provide financing for 19 projects (Belt and Road Portal, 2019) and Fund acts as a lender, equity investor or investor in sub-funds (Types of investment, 2019).

Finally, the OBOR Vision also includes a chapter on cooperation mechanisms (Chapter V), which provides that China take full advantage of the existing bilateral and multilateral cooperation mechanisms to push forward the building of the Belt and Road and to promote the development of regional cooperation and encourage signing of cooperation Memorandums of Understanding.

A cooperation format between China and Central and Eastern European Countries known as "16+1 Cooperation", which includes 11 EU member states and 5 Balkan countries (with Greece joining this format, it became '17+1') and which convenes in annual summits, was founded in 2012 and serves as a platform to promote the OBOR, which is the major cooperation priority under the OBOR Vision and essential component of OBOR. The BRI projects that were coordinated and concluded through "16+1 Cooperation" mechanism and BRI includes Serbia's E763 Highway project (which is part of European Route E 75), the Hungarian section of Budapest-Belgrade Railway and a bridge in Croatia (China-CEEC webpage, 2018). The Budapest-Belgrade Railway, which was announced in 2013 meeting of the "16+1 Cooperation" in Bucharest was considered to be the first stage of a project that would ultimately connect the China-run Piraeus port in Greece with the heart of Europe (Shepard, 2017).

Moreover, China claims that it has signed 171 cooperation documents with 29 international organizations and 123 countries related to BRI (Zhu, 2019). Although the Belt and Road portal does not provide a list of such instruments or of such countries, these documents usually are in the form of memorandums of understanding (MoU). They are non-binding legal instruments, but they serve as a necessary political requirement for China to engage into BRI projects with other countries. Moreover, they are used as diplomatic tools legitimizing the OBOR, where parties reach an understanding of cooperating on usually the five cooperation priorities (Ibold, 2018) prescribed in the OBOR Vision. It should be noted that the fact that some MoUs were concluded with countries that are not located near Belt or Road (e.g. Nigeria, Senegal or Sierra Leone) demonstrate that OBOR initiative is not limited or

¹ Article 4, Asian Infrastructure Investment Bank Articles of Agreement [interactive] [accessed on 2019-04-30] <https://www.aiib.org/en/about-aiib/basic-documents/_download/articles-of-agreement/basic_document_english-bank_articles_of_agreement.pdf>.

² *Ibidem*.

exclusively is directed to Europe and reflects a much broader economic development policy of China. Some authors even indicate that OBOR is neither strategy, nor vision, but is a process that changes depending on China's economic development policy goals (Stec, 2018).

Changing attitudes of the EU towards China and its investments: from friends to strategic rivals

According to OECD FDI Regulatory Restrictiveness Index¹ EU member states have the world's most open investment regimes for foreign investment (from 0.004 in Luxemburg to 0.106 in Austria, where 0 is least restrictive and 1 – absolutely restrictive). Whereas, China scores 0.251 for the year of 2018, meaning it is much more restrictive than EU.

Throughout the years, China made a substantial amount of investment in the EU, especially as after the global financial crisis of 2008 and European sovereign debt crisis of 2009-2012, the region was hungry for foreign investments. Although it is difficult to calculate the exact aggregate value of China's foreign direct investment in the EU member states, the EU countries are a preferable destination for China's Foreign direct investment (FDI). According to Hanemann and Huotari (2015) from 2000 to 2014 China invested EUR 46.112 billion in EU-28 member states. A study of Mercator Institute for China Studies (Seaman at all., 2017) notes that from 2000 to 2016 the EU-China FDI Monitor dataset recorded more than 1,400 individual FDI transactions by Chinese investors in the EU worth a combined EUR 101 billion. A study by Bloomberg (Tartar at all., 2018) put a total number of China's European investments (including Switzerland), encompassing mergers and acquisitions and green-field investments (investments creating a new enterprise or economic activity rather than acquiring an existing company) to at least USD 318 billions over the period from 2008 to 2018, which included the acquisition of around 360 companies.

Although there are difficulties regarding the measurements of aggregate number China's FDI in the EU, the data on the flows of FDI in EU are more accessible. From 2017 the Chinese FDI to EU started to decrease. According to data from Rhodium Group (Hanemann et al, 2019) in 2018 Chinese FDI in the EU-28 dropped². The combined value of completed FDI transactions fell to EUR 17.3 billion in 2018, down 40 percent from 2017 levels (EUR 29.1 billion) and a drop of over 50 percent from the peak of EUR 37 billion in 2016. However, the share of investments from State-owned-enterprises remained high (71% in 2017, 41% in 2018). The reasons for such slump originated in China: in 2018, Beijing maintained its tight grip on outbound capital flows; it pressured highly leveraged firms to sell off overseas assets; and it reduced liquidity in the financial system (Hanneman et al, 2019). Notwithstanding to such slowdown of inflow of Chinese FDI, China became one of the biggest investors in the EU.

Such levels of Chinese FDI and China's active support of BRI, raised several concerns about China's investments in the EU in particular and in Europe in general. First of all, as substantial part of FDI in EU were performed by Chinese State-owned enterprises (71% in 2017, 41% in 2018), which at very least raised to suspicion that FDI serves China's policy goals instead of purely commercial interests. Secondly, success of Chinese companies in the majority of BRI procurements and the lack of transparency in processes through which firms are selected to execute BRI projects (Ghossein at all., 2018), caused concerns that they create debt traps for developing countries, leaving them with unsustainable debts. Center for Global

¹ OECD FDI Regulatory Restrictiveness Index [interactive] [accessed on 2019-04-29] <<https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#>>.

² Report indicates, that there were some substantial investments that did not reach the threshold of 10%, e.g. Geely's EUR 7.3 billion acquisition of a 9.7 percent stake in Daimler in February 2018. If such acquisitions had been included in calculation the level of China's investment in EU would be similar to the level in 2017.

Development identified Montenegro as one of the countries which could suffer from debt distress due to BRI-related financing (Hurley et al, 2018). According to this study Montenegro's big debt problem has one source – a very large infrastructure project, which being part of BRI, was financed by China through loan to the government– a motorway linking the port of Bar with Serbia, which would integrate the Montenegrin transport network with those of other Balkan countries, the cost of which constitutes over 25 percent of GDP. Thirdly, interference of some EU member states, which belong to the “16+1 Cooperation” group with substantial Chinese investments in the EU's foreign relations connected to China's human rights record, created concerns about the influence of China and its effect to unity of EU, as well as to the erosion of the EU's fundamental values (such as human rights and rule of law). Due to strong opposition of Greece, Hungary, and Croatia the EU did not “support” or “welcome” the Permanent Court of Arbitration tribunals decision on the disputes in the South China Sea (where it found that there was no legal basis for China to claim historic rights to resources within the sea areas falling within ‘nine-dash line’), but merely “acknowledged” it (Fallon, 2016). In June 2017 for the first time the EU failed to make an annual statement at the U.N. Human Rights Council, criticizing China's human rights record, because Greece blocked it and EU did not have the agreement from all 28 EU member states (Emmott and Koutantou, 2017). In 2017 Hungary similarly blocked a joint letter on the torture of Chinese human rights lawyers and fears started to grow that Italy could begin to act in a similar way following its endorsement of the BRI (Marques, 2019).

The EU tried to accommodate Chinese FDI and BRI, by establishing the EU-China Connectivity Platform in 2015, a policy forum between EU and Chinese officials to promote synergies between the BRI and EU policies and cooperation on infrastructure, including financing, interoperability and logistics (MEMO/16/2258, 2017). In 2018, on the third meeting of the EU-China Connectivity Platform, the Short-Term Action Plan was agreed. Under this plan the EU and China agreed to strengthen the synergies between China's BRI and the EU's Trans-European Transport Network's policy (which includes rail, road, water ways) and establish a rolling implementation mechanism and jointly identify the list of pilot projects and priority actions, focusing on the key multimodal hubs and missing links on the Trans-European Network for Transport and the EU-China cargo train routes¹. However, although China joined the Connectivity Platform, thus accepting an institutional approach with the EU, it still prefers a bilateral approach which is based on direct negotiations with individual EU member states (Barbieri and Miranda, 2018). As such behaviour created a huge embarrassment for the EU on international stage (failure to denounce human right violations) and threatened the unity of the block, the EU's position towards China has shifted².

In March 2019 the European Commission announced about a new policy towards China³, noting that the balance of challenges and opportunities presented by China has shifted and that China was not only a negotiating partner, but also was an economic competitor in the pursuit of technological leadership, as well as a systemic rival, promoting alternative models of governance. The European Commission reiterated that such new reality required a flexible and pragmatic whole-of-EU approach enabling a principled defence of interests and values. Moreover, the Commission indicated that unity of all EU member states is required and provided 10 actions points which reflects the roadmap for future EU engagement with China.

¹ EU-China Connectivity Platform Short-Term Action Plan [interactive] [accessed on 2019-04-30] <<https://ec.europa.eu/transport/sites/transport/files/2018-07-13-eu-china-connectivity-platform-action-plan.pdf>>

² It should be noted that those were only few of the reasons for the policy towards China to change.

³ Joint communication to the European Parliament, the European Council and the Council. EU-China – A strategic outlook. JOIN(2019) 5 final. 12.3.2019.

However, such stark policy change towards China and labelling of China as an ‘economic competitor’ or a ‘systemic rival’ were not the only changes, as the EU also joined several other major economies, which had already had instruments related to investment screening on the grounds of national security¹, by adopting a new legislative instrument – Framework Regulation – which provides EU level screening mechanism for FDI from third countries.

Main provisions of the Framework regulation

As foreign direct investment is included in the list of matters falling under the common commercial policy pursuant to Article 207(1) Treaty on the Functioning of the European Union (‘TFEU’)², under Article 3(1)(e) of the TFEU, the European Union has exclusive competence with respect to the common commercial policy. The EU started considerations on common framework for investment screening regime in 2017 and there already were concerns about FDI in the EU’s strategic industries, infrastructure and key future technologies and the protection of access to them³. As only around half of EU Member States had mechanisms for screening foreign direct investments, which varied in scope (review of intra- or extra-EU FDI; differing screening thresholds, breadth of sectors covered beyond defense) and design (pre-authorisation vs. ex-post screening of FDI) (Grieger, 2018) in place, the Commission proposed to solve it through regulation, thus ensuring a single centralized FDI screening mechanism.

On 19 March 2010 the Framework Regulation was adopted, which established a framework for the screening by Member States of foreign direct investments into the Union on the grounds of security or public order and for a mechanism for cooperation between Member States, and between Member States and the Commission, with regard to foreign direct investments likely to affect security or public order⁴. It will become applicable from 11 October 2020⁵.

The Framework Regulation provides a broad definition of FDI. Under Article 2(1) of the Framework Regulation, FDI means “an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of a company carrying out an economic activity”. Such wording does not seem to follow the international investment treaties or free trade agreements concluded by EU, but rather follows statistical description of foreign direct investment used by Eurostat (Eurostat metadata, 2017). It also should be noted that the Recital 9 of the Regulation provides that portfolio investments are not covered, which might cause impression that equity investments (investments in shares that do not give controlling

¹ In USA The Committee on Foreign Investment in the United States (CIFUS) reviews transactions involving foreign investment in regards to national security under The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA); in Canada a national security review process is performed against foreign investment under Investment Canada Act; in Australia foreign investor requires approval from the Foreign Investment Review Board which involves national security issues under Foreign Acquisition and Takeovers Act; in Japan there is post-investment and limited pre-investment reporting system that allows screening of investment on national security grounds under the Foreign Exchange and Foreign Trade Act of 2017.

² Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012.

³ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions Welcoming Foreign Direct Investment while Protecting Essential Interests. COM(2017) 494 final. 13.9.2017.

⁴ Article 1 of the Framework Regulation.

⁵ Article 17 of the Framework Regulation.

stake) are not covered by Framework Regulation. However, considering the Eurostat descriptions of 'direct investment', 'immediate direct investment relationship' and 'foreign direct investment' (Eurostat metadata, 2017), portfolio investment should be regarded as equity investment (acquisition of shares) that do not reach 10% of the voting power in investment enterprise.

The Framework Regulation does not impose an obligation on Member States to have a screening mechanism, but should a member state decide to have one, the Regulation establishes certain requirements for such mechanism. They include transparency of rules and procedures, non-discrimination among foreign investors, confidentiality of information exchanged, the possibility of recourse against screening decisions, and measures to identify and prevent circumvention by foreign investors¹.

Although the Framework Regulation is silent on what constitutes security or public order and leaves it for each Member State to decide on this issue², but it does provide a non-exhaustive list of factors that have to be taken into account while deciding whether foreign direct investment is likely to affect security or public order. While determining the effect of investment the Member State may consider its potential effects on: critical infrastructure, such as energy, transport, water and other; critical technologies and dual use items, supply of critical inputs, including energy or raw materials, as well as food security, access to sensitive information and freedom and pluralism of the media. Moreover, it should be noted that under Article 4(2) the control of the foreign investor (through ownership or financing) and pursuit of State-led outward projects or programmes³ should also be taken into account.

The fundamental part of the Framework Regulation creates an expedient cooperation mechanism in relation to FDIs which either undergo screening (Article 6) or do not (Article 7). If FDI undergoes screening, then the Member State, conducting the screening, has obligation to notify the Commission and other Member states about such screening and provide information on such FDI. Such data includes information about the investor and the target company, the sectors in which they operate, the value of the investment and its funding, as well as the date of its completion⁴. Member States and Commission can then provide comments on whether such FDI is likely to affect its security or public order (the Commission provides opinion). When a planned or completed FDI does not or did not undergo screening any Member State or Commission may request the Member State of location of such FDI to provide information on such FDI (as described above and such Member State is under obligation to provide such information) and can provide comments on how such planned or completed FDI is likely to affect its security or public order (the Commission provides opinion). It should be noted that in any case the Member State performing the investment screening or where FDI is planned or has been completed without the screening, is under no direct obligation to follow on concerns expressed in comments of opinion of other Member States or Commission. However, the Regulation requires such Member State give due consideration to such comments or opinion.

Finally, the Framework Regulation also provides that the Commission can issue an opinion on planned or completed FDI that is likely to affect projects or programmes of Union interest on grounds of security or public order. Such projects and programmes are listed in Annex to the Framework Regulation and includes Galileo, Copernicus programmes, Horizon 2020, Trans-European Networks for Transport (TEN-T), Trans-European Networks for

¹ Article 2 of the Framework Regulation.

² Article 1(2) of the Framework Regulation.

³ Recital 13 of the Framework Regulation.

⁴ Article 9(2) of the Framework Regulation.

Energy (TEN-E). In such a case the Member State where the foreign direct investment is planned or has been completed cannot simply dismiss the Commission's opinion, but must take utmost account to it and provide an explanation to the Commission if its opinion is not followed.

Although such screening mechanism might not seem sufficient, as the final decision making is still left for the Member State where the FDI is planned or has been completed, but it provides a mechanism for information sharing with the Commission and other Member States and sends a clear message to investors about the factors that are important for assessment of FDIs impact on security or public order.

Conclusions: potential impact of the Framework Regulation on OBOR initiative projects

The Framework Regulation will have immense regulatory effect on Chinese FDI related to OBOR initiative. One of the pillars of the OBOR initiative is construction of land transport and sea transport infrastructure, with the aim of creating Belt and Road to Europe. Moreover, Chinas SEOs are the usual winners of BRI projects, which are financed mainly by loans from China. Furthermore, the EU has labelled China as 'economic competitor' and 'systemic rival'. All such factors will be relevant while applying the Framework Regulation:

1. Trans-European Networks for Transport (TEN-T) is explicitly indicated as project of Union interest, which gives to the Commission some leverage regarding screening o FDI's related to OBOR initiative in Member States (e.g. acquisition of equity in port operators) and requires such Member States to provide explanation to the Commission if its opinion is not followed;

2. Member State during the screening process and sometimes even when there was no screening process at all (if another Member State or Commission provides comments or opinion on such FDI under the Framework Regulation) should take into account the potential effects of FDI on critical transport and energy infrastructure;

3. Equity investments of China's state-owned enterprises in EU will be scrutinised due to their ownership structure and ways of financing and pursuit of state-led outwards projects or programmes, especially considering EU's opinion about China as 'economic competitor in pursuit of technological leadership';

4. Framework Regulation will bring transparency to Chinese FDI, as it requires Member States to reveal information about the FDI, including information about investor's ownership structure, the sectors in which they operate, the value of the investment and its funding, as well as date of its completion.

However, some caution is warranted, because not all OBOR projects will fall under the Framework Regulation, which deals only with FDI. Thus, the Framework Regulation will not include BRI projects that are structured through loans to governments and public tenders of construction works, as such projects are not considered as FDI.

Finally, it should be noted that although the Framework Regulation will affect EU member states ranking in OECD FDI Regulatory Restrictiveness Index, but the mere existence of such screening framework will not necessarily have a big affect on FDI flows from China. EU is still an attractive place for China's FDI. The FDIs from China to EU have started to slow even before the Framework Regulation has been adopted and for the reasons related to China's internal policy changes (capital controls, financial system's liquidity control). Therefore, the true impact of the Framework Regulation to China's FDI flows to the EU in general and FDI related to OBOR initiative in particular will become known only after the Framework Regulation becomes applicable. Only after we have some practice of the Commission or EU

Member States in use of Framework Regulation for the China's FDI in the EU, we can make conclusions on real impact and effect of such new screening mechanism for the Chinese FDI related to BRI in the EU.

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